

UNITED STATES DISTRICT COURT  
for the

Western District of North Carolina

United States of America )  
v. )  
Audrey Gabriel ) Case No: 3:05CR104-25  
Date of Previous Judgment: 04/24/2007 ) USM No: 20253-058  
(Use Date of Last Amended Judgment if Applicable) ) Tanzania C. Cannon-Eckerle  
Defendant's Attorney )

**Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)**

Upon motion of  the defendant  the Director of the Bureau of Prisons  the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion.

**IT IS ORDERED** that the motion is:

## **I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)**

Previous Offense Level: 25 Amended Offense Level: 23  
Criminal History Category: III Criminal History Category: III  
Previous Guideline Range: 120 to 120 months Amended Guideline Range: 120 to 120 months

## II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- The reduced sentence is within the amended guideline range.
- The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- Other (explain): No reduction is authorized because Defendant's original sentence was "based on" a departure from the statutory mandatory minimum and not on a sentencing range lowered by Amendment 706. See United States v. Hood, --- F.3d ----, 2009 WL 416979 (4<sup>th</sup> Cir. Feb. 20, 2009).

### III. ADDITIONAL COMMENTS

Except as provided above, all provisions of the judgment dated 04/24/2007 shall remain in effect.

## IT IS SO ORDERED.

Order Date: February 24, 2009

Effective Date: \_\_\_\_\_  
(if different from order date)

*Frank D. Whitney*